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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,817	03/10/2004	Edward Francis Farina	DCS-9160 CIP	7492
34500	7590	11/04/2004		
DADE BEHRING INC. LEGAL DEPARTMENT 1717 DEERFIELD ROAD DEERFIELD, IL 60015			EXAMINER LUDLOW, JAN M	
			ART UNIT 1743	PAPER NUMBER

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/797,817

Applicant(s)

FARINA ET AL.

Examiner

Jan M. Ludlow

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/10/2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

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1. The application contains references to numerous other patent applications. The references should be updated to include filing date, status, and where available patent numbers, so that the cross-references can be better identified.

2. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, "the location for penetration by the probe" is directed to intended use and it is unclear what structural limitation is intended. For purposes of examination, the location for penetration has been interpreted as the center of each well as disclosed. In claim 4, it is unclear whether the "at least one open generally circular well..." is the same or different from that of claim 2, from which claim 4 depends. In claim 8, "the well" lacks antecedent basis because claim 8 depends from claim 1, not claim 2 or 4 in which the well is recited.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the embodiment of claim 10 in which the cross slit extends beyond the end slits must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Glanz.

Glanz teaches a lid with layer 22 and slits formed in the shape of a capital I as shown in Figure 1. the lid is used to permit access to a chemical container by a removal tool and resealing of the container after removing the tool (col. 1, lines 10-42).

9. Claims 1-2, 8, 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Gupta.

Gupta teaches a lid stock with a plurality of wells for insertion in a multiwell vessel plate (Figs 7-8). Slits for permitting penetration of a probe tip are provided in the bottom of the well and can include "T" and "Z" shaped slits as shown in Figure 13.

10. Claims 1-9, 11, 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berray in view of Glanz.

11. Berray teaches a lidstock having wells as claimed with slits for penetration of the lid to access vessels 23 (Figs. 4, 10). An "O-ring-like" structure 30 is shown below indentation 34 in Figure 7. The structure is like an o-ring in that it is circular and protrudes from the surface defined by the diameter of the indentation 34.

12. Berray fails to teach slits in the form of an "I".

13. The teachings of Glanz are given above.

14. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an "I" slit in the device of Berray in order to use a known alternative for permitting access to a chemical in a container and resealing of the container after removal of the removal tool as taught by Glanz.

15. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berray and Glanz as applied to claims above, and further in view of Goodale (6627156).

The primary references fail to teach the cross slit extending beyond the end slits.

Goodale teaches a device for making slits in septa to facilitate probe insertion.

An "I" shaped cut with the cross extending beyond the ends is shown in Fig. 4.

It would have been obvious to modify the "I" slit of Glanz in Berray to form the cut as claimed in order to provide an "eye" shaped seal around the probe for better ventilation as taught by Goodale (col. 4, lines 42-50).

16. Claims 1, 2, 8, 12, 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berray in view of Merkh.

The teachings of Berray are given above.

Berray fails to teach a "V" shaped slit.

Merkh teaches a test vessel with an ingress slit for insertion of a probe and resealing upon removal. The slit may be "V" shaped (Figs. 16-17, col. 10, lines 14-59).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an "V" slit in the device of Berray in order to use a known alternative for permitting access to a chemical in a container and resealing of the container after removal of the removal tool as taught by Merkh.

17. Claims 1, 2, 8, 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berray in view of Gupta.

The teachings of Berray are given above.

Berray fails to teach a "T" shaped slit.

The teachings of Gupta are given above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an "T" slit in the device of Berray in order to use a known alternative for permitting access to a chemical in a container and resealing of the container after removal of the removal tool as taught by Gupta.

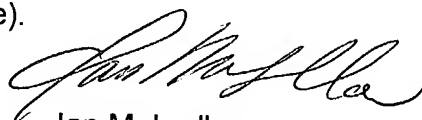
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18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
19. Bauer et al teaches W and K shaped slits (Figs. 13, 15).
20. Leone teaches an I shaped slit with Y shaped ends.
21. EP 0436839 teaches a variety of shaped slits.
22. Goodale teaches a Z slit cutter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan M. Ludlow whose telephone number is (571) 272-1260. The examiner can normally be reached on Monday-Thursday, 11:30 am - 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jan M. Ludlow
Primary Examiner
Art Unit 1743

11/1/04